IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

NO. 80-1147

LOCAL 1576, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO
Petitioner

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, et al
Respondents

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF LOCAL 307, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

SIDNEY RAVKIND
MANDELL & WRIGHT
806 Main Street, 21st Floor
Houston, Texas 77002
713/228-1521
Attorneys for Respondent, Local 307

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

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STATEMENT OF THE CASE

Reading petitioner's Petition, the other parties to this case would immediately conclude that petitioner is discussing the facts of some other case.

A. The Locals.

ILA Local 307 is a general cargo deep sea longshoremen's union. That local is predominantly white but has an approximate 30% to 40% Mexican-American or Hispanic work force. Local 851 is also a general cargo deep sea longshoremen's union. Its membership is predominantly black but has a small percentage of whites and Hispanics in its work force. Local 329 is a deep sea longshoremen's union servicing a small group of stevedores which traditionally have handled cargoes of sacked sugar. That local is predominantly black but has a small percentage of whites and Hispanics in its work force. Local 1576 is a deep sea longshoremen's union servicing a small group of stevedores which handle green fruit cargo. That union is predominantly Hispanic but has a small percentage of whites and blacks in its work force.

In 1971, Judge Garza found as a fact that Local 1576 was discriminated against because of its limited charter and the limited work available under that charter. (Petitioner's petition, App. p. 47a.) The same basic findings was made by Judge Garza as to Local 329. (*Id.* pp. 47a-48a.) In 1971, Local 1576 just wanted an expansion of its charter. (*Id.* at p. 47a.) Local 329 wanted merger of all work. (*Id.* at p. 47a.)

In 1979, the work of Local 1576 under the charter had increased dramatically. (*Id.* p. 16a.) The work available to Local 329 had not increased. (See Appendix A, the recent Order of A. A. White, Master, ordering interim consolidation because of the deprivation being suffered by Local 329). Local 1576 no longer desires any relief in this case, it now being satisfied with the work allocated to it. Local 329 used to have a great deal of work, but

it continues to desire merger because its work since 1971 has not increased like that of 1576.

B. The Work.

Bananas are shipped on deep sea vessels in boxes in a refrigerated cargo hold. In unloading, the boxes are put on conveyors by longshoremen and then into refrigerated trucks. The only difference between unloading bananas and unloading other types of boxed cargo is that the work area is cool when working bananas.

C. Who Discriminated Against Whom?

On this issue, the Fifth Circuit observed:

> In view of this court's prior holding that segregated locals must be merged whenever they result in unequal employment opportunity, the only new evidence that could have justified excluding Local 1576 from the merger would have been evidence that the local is no longer segregated or that its segregated existence does not deprive any group of equal employment opportunity. The evidence demonstrated the contrary. Local 1576, still chartered as a union for Mexican-Americans, remains functionally segregated. *See e.g.*, Record, Vol. II, at 22-24, 41-44, 73. In 1971 the district court found that black longshoremen "have to be referred out of a [black] local hiring hall"; that "White longshoremen are referred out of a White Longshoremen's hiring hall"; and that exceptions to this practice "have been few and far between." 338 F.Supp. at 978. *See also* 511 F.2d at 277 n.8. Based on evidence presented at the September 1979 hearing on remand, the district court specifically found that this practice has not changed: few black longshoremen obtain employment through either white Local 307 or Mexican-

American Local 1576, and few white or Mexican-American longshoremen obtain employment through the black locals (329 and 851). Referring to the tradition among the Galveston locals that members of each race are expected to seek work only with the local whose membership is composed of that race, the court commented:

> I don't doubt . . . at all that when there are some Blacks there in 1576 . . . the Mexican-Americans have the first crack at it. If I made any other findings, I would be a liar.

Record, vol. II, at 217. Although the trial court may have been correct in stating that Local 1576 never actively discriminated against members of any racial group, the fact remains that as one of four segregated Galveston longshoremen's locals, Local 1576 has been part of a system which operates to discriminate against people because of race and national origin. That Local 1576 may not have intended to discriminate does not justify its exclusion from the order of merger mandated by this court. *See* 511 F.2d at 278 (Title VII does not look to the intention of those who segregate). *See also International Brotherhood of Teamsters v. United States,* 431 U.S. 324, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977).

REASONS FOR NOT GRANTING THE WRIT

This long tortured case is approaching conclusion. The International Union chartered the four locals in Galveston on the basis of race. In 1971, Judge Garza observed:

> "It has been stipulated that I.L.A. chartered the locals on the basis of race, and there is no question that it has maintained these locals on the basis of race, has at all times been aware of their segregated nature and has done nothing to seek their mergers,

or to charter integrated locals since the passage of the Civil Rights Act." (See Petitioner's App. p. 41a).

The last question to be decided is whether an Hispanic local should be excluded from the merger because it is now satisfied with its allocation of work. It seems to us that, if it was true in 1971 that the allocation of meager green fruit trade to the Hispanics violated their civil rights it must also be true in 1979 that allocation of meager general cargo work to whites and blacks violates their civil rights.

Nothing in *Teamsters v. United States,* 431 U.S. 324 (1977) or the other cases cited by petitioner dealing with the interplay between Title VII and the National Labor Relations Act has any decisional bearing on this case. Petitioner's argument that 1576 never discriminated against anyone must be viewed in the light of the record and the findings of the Fifth Circuit, quoted *infra* p. 3.

CONCLUSION

For the foregoing reasons, the Writ should be denied.

Respectfully submitted,

SIDNEY RAVKIND
MANDELL & WRIGHT
806 Main Street, 21st Floor
Houston, Texas 77002
713/228-1521
Attorneys for Respondent, Local 307

CERTIFICATE OF SERVICE

This is to certify that on the_____day of February, 1981, true and correct copies of the above and foregoing instrument were served on the following counsel by placing same in properly addressed envelopes, postage prepaid, and depositing in the United States mail:

Julia Penny Clark
Robert M. Weinberg
Michael H. Gottesman
Bredhoff, Gottesman, Cohen, Chanin,
Weinberg & Petramalo
1000 Connecticut Avenue, NW
Washington, D.C. 20036
Counsel for Petitioner, Local 1576

Robert M. Moore
Moore & Lawrence
99 Detering, Suite 230
Houston, Texas 77007
Counsel for Respondent, Local 851

Joel M. Cohn
Office of General Counsel
Equal Employment Opportunity Commission
2401 E Street, N.W.
Washington, D.C. 20506

SIDNEY RAVKIND

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CIVIL ACTION NO. 69-B-3

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,
Plaintiff

v.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, ET AL

INTERIM ORDER

Pursuant to the authority vested in me by the Order of Reference entered herein on August 17, 1979, as revised by the Court on February 1, 1980, reported hearings were held in Galveston, Texas on June 17, 1980 and September 18, 1980. Unreported hearings and conferences had previously been held. At those hearings and conferences facts were presented and arguments were made. The Master has also entered orders herein for the performance of certain actions, one on July 21, 1980 and another on September 26, 1980. On the basis of the facts presented and the arguments made at said hearings and conferences, and the information presumed to have been developed in complying with said orders, it is further found and ordered, pending the issuance of a final order herein, that I.L.A. Locals 307, 329 and 851 proceed as follows:

1. By the Master's Order dated September 26, 1980, each Local was to have perfected its seniority list by November 1, 1980, to have made a copy of said list available to the other two Locals, and to have announced that its supporting information was available for inspection. The Master has not heard otherwise, and it is presumed that such was done.

In the Month of November, 1980, the Locals were to consolidate those lists. The Master has not been advised otherwise, and it is presumed that such was done.

2. It is found that Longshoremen working out of I.L.A. Local 329 have long been at a disadvantage, when compared to men working out of I.L.A. Locals 307 and 851, with respect to work opportunities. There is simply less work per man available through this Local. Judge Garza and the Master have thus far respected the wishes of the Galveston Locals that they not be formally merged until the Houston Deep Sea Locals are merged. This makes it imperative that interim relief be given to men working out of Local 329.

3. I find that the hiring hall of I.L.A. Local 307 is adequate to be used as a temporary hiring hall for the combined Longshoremen working out of the three Locals named herein. The hiring hall of Local 851 is also adequate for that purpose. In fact the hiring hall building of Local 851 is some better than the hiring hall building of Local 307, but the possibilities for expanded parking at the hall of Local 307 appears substantially better than at Local 851, and parking is regarded as crucial.

Locals 307, 239 and 851 are, therefore, hereby ordered, effective March 1, 1981, to consolidate all of their Longshoremen hiring activity in the hiring hall of Local 307. The hiring will be conducted pursuant to the merged seniority list presumed to exist under item 1 above. In the event such presumption is in error, and such a list does not exist now or by March 1, 1981, then each Longshoreman shall have, for the purposes of the combined hiring hall activity, the number of years of seniority he has in his own local, and a year of seniority in any local shall be equal to a year of seniority in each of the other two locals.

The Committee constituted by the order of the Master dated July 21, 1980 is hereby charged with the responsibility of implementing this Order including any remodelling required of the hiring hall of Local 307 and expanding its parking area. Any expenses incurred are to be borne equally by the three Locals named herein since it will be used by all three and since the hall or the proceeds from its sale will eventually become the property of the merged local.

If there are objections to this order, they should be filed with the master in the greatest detail feasible by February 15, 1981. A copy of such objections should be provided the other parties. If such objections are filed, a hearing will be held in Galveston on February 25, 1981 to resolve those objections.

Entered this the 20th day of January 1981.

/s/ A. A. WHITE
A. A. White, Master